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NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

FRANCISCO SOCORRO SILVA,

Petitioner - Appellant,

v.

J. C. HIGGINS, INS Commissioner; MIKE
ADAMS, Warden,

Respondents - Appellees.

No. 02-55794

D.C. No. CV-99-02962-TJH

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Terry J. Hatter, Chief District Judge, Presiding

Submission Deferred August 6, 2003
Submitted October 30, 2003**
Pasadena, California

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before: KLEINFELD, WARDLAW, and W. FLETCHER, Circuit Judges.

Francisco Socorro Silva, a Mariel Cuban in Immigration and Naturalization Service (“INS”) detention for over seven years, petitions for habeas corpus relief pursuant to 28 U.S.C. § 2241. Silva argues that he is entitled to a determination whether his removal to Cuba is reasonably foreseeable and, if it is not, that under *Zadvydas v. Davis*, 533 U.S. 678 (2001), he should be released. We deferred submission pending our decision in *Marquez v. INS*, __ F.3d __, 2003 WL 22156287 (9th Cir. Sept. 19, 2003), which now controls this case. In *Marquez*, we held that the *post*-IIRIRA presumptive six-month limit on the detention of admitted aliens ordered deported, and inadmissible aliens ordered removed, also applies to aliens ordered excluded under *pre*-IIRIRA law. *Id.* at *5. Because under *Marquez* Silva is entitled to a determination whether his removal to Cuba is reasonably foreseeable, and if it is not, to a conditional release, *id.* at *8, we reverse the district court’s denial of Silva’s habeas petition and remand for further proceedings consistent with our opinion in *Marquez*.

REVERSED and REMANDED.